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RESPONSE under 37 C.F.R. § 1.116
U.S. Appln. No. 10/039,461

REMARKS

Claims 2-5, 7-10 and 12-17 are all the claims pending in the present application and stand finally rejected. Reconsideration and allowance of all pending claims are respectfully requested in view of the following remarks.

NOTICE OF APPEAL.

Applicant submits herewith, a Notice of Appeal of the final rejections of record. Since Applicant previously paid for a Notice of Appeal and Appeal Brief and since the Examiner reopened prosecution withdrawing the application from the previous Appeal filed by Applicant on July 26, 2005 no fee is believed necessary.

CLAIM REJECTIONS.

35 U.S.C. § 103

Claims 2-5, 7-10 and 12-17 stand finally rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent 6,658,264 to Irvin in view of U.S. Patent 6,816,711 to Standke et al. (hereinafter "Standke"). Applicant respectfully traverses this rejection for the following reasons.

LEGAL STANDARD

It is well established that a *prima facie* obviousness is only established when three basic criteria are met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine reference teachings. Second, there must be a reasonable expectation of

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success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *In re Vaeck*, 947 F.2d 488 (Fed. Cir. 1991) (MPEP 2144).

Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art. *In re Kotzab*, 217 F.3d 1365, 1370 (Fed. Cir. 2000). The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680 (Fed. Cir. 1990).

ARGUMENT

The Final Office Action cites Irwin as disclosing a switch (324 of Fig.3) to couple the first transceiver 372 to antenna 374 wherein switch 324 has an input node directly connected to the antenna 374 as claimed in Applicant's independent claim 7. (7/6/06 Final Office Action pg. 2). The Final Office Action expressly admits that Irwin fails to teach or suggest that switch 324 is a micro-electromechanical system (MEMS) switch. To make up for this deficiency, the Office Action relies on Stanke alleging "it would have been obvious.....to apply the technique of Stanke to the communication system of Irwin in order to integrate an internal radiotelephone antenna in a wireless communication device [sic] that can operate within multiple frequency bands." (7-6-06 Final Office Action pg. 3; emphasis added).

Applicant respectfully submits that *prima facie* obviousness has not been established with respect to the pending claims at least because: (1) there is no proper motivation to modify Irwin with the teachings of Stanke; and (2) even assuming the combination of cited references would be proper, the limitations present in Applicant's pending claims are still not taught or suggested by the resulting combination of cited references.

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(1) **THERE IS NO PROPER MOTIVATION TO COMBINE THE TEACHINGS OF IRWIN AND STANDKE.**

As correctly noted by the Office Action, Irwin does not disclose a first switch is a micro-electromechanical system (MEMS) switch and a field effect transistor (FET) coupled to the MEMS switch. Instead the Office Action cites col. 2, ll. 42-51 of Standke as disclosing this feature, alleging, "[i]t would have been obvious to one of ordinary skill in the art....to apply the technique of Standke to the communication system of Irwin *in order to integrate an internal radiotelephone antenna in a wireless communication device that can operate within multiple frequency bands.*" (7/6/06 Final Office Action pg. 3; emphasis added).

Applicant respectfully disagrees and submits that alleged motivation for modifying Irwin with Standke as proposed by the Office Action does not even exist since Irwin already discloses its own internal radiotelephone antenna 374 in a wireless communication device 300 that can operate within multiple frequency bands (e.g., cellular and Bluetooth™). (See generally, Irwin Figs. 2-3 and col. 5, ll. 51 to col. 6, ll. 1-47).

In fact, the teachings of Irwin are primarily related to a multiple entry phonebook which may utilized access numbers for different radio networks (e.g., cellular and Bluetooth). (See Irwin Abstract). In any event, both Irwin and Standke disclose communication systems having an "internal radiotelephone antenna in a wireless communication device that can operate withing multiple frequency bands." Accordingly, the motivation proposed in the Office Action to combine the Irwin and Standke simply does not exist. Since there is no proper motivation to combine the references as suggested, *prima facie* obviousness is not established and the §103 rejection should be withdrawn.

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(2) ALL CLAIM LIMITATIONS ARE NOT DISCLOSED OR SUGGESTED EVEN IF IRWIN AND STANKIE ARE COMBINED.

Respectfully, Applicant submits that even if there were proper motivation to combine Irwin and Standke (*arguendo*), the resulting combination of these references would still fail to teach or suggest the limitations present in Applicant's independent claims. For example, Applicant's independent claim 7 recites:

*7. A portable communication device comprising:
a first transceiver;
a first microelectromechanical system (MEMS) switch coupled to the first transceiver to an antennae, wherein the first MEMS switch has an input node directly connected to the antennae; and
a field effect transistor switch coupled to an output of the first MEMS switch.*

The Office Action incorrectly alleges that Irwin switch 324 has an input node directly connected to antenna 374. (7/6/06 Final Office Action pg. 2). As previously pointed out by Applicant in its response filed April 5, 2006, it is clear from a simple glance at Irwin Fig. 3 that the Office Action interpretation is wholly unfounded. Antenna 374 is plainly shown by Irwin to be permanently connected to both the first and second transceivers 372, 340 (see Fig. 3). In response to Applicant's argument, the Office Action states "[i]t will be understood by those having skill in the art that these switches need not be a physical switch and can be implemented using software and/or other means known in the art" and "[i]t is understood that these switches can have an input node directly connected to the antenna." (7/6/06 Final Office Action pg. 8).

Respectfully, Applicant continues to disagree and notes that its claims expressly recite a specific "physical" switching structure which is not disclosed or suggested by Irwin or any prior art reference of record. Therefore, it is entirely irrelevant how the Office Action believes the skilled artisan could implement switches using software. Furthermore, since Irwin is cited as teaching this specific limitations present in Applicant's claims but Irwin expressly shows switch

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324 being implemented between analog-to-digital converter (ADC) 310 and the first and second transceivers 372, 240 rather than between these transceivers and antenna 374, Irwin not only fails to teach or suggest Applicant's claimed limitations but actually teaches away from the Office Action position that Irwin shows "it is understood that these switches can have an input node directly connected to the antenna."

Notwithstanding, Standke does in fact show a switch 14 having a node directly connected to an antenna 12. And, while the Office Action correctly notes that Standke discloses that antenna switch 14 could be implemented as a MEMS switch, FET, PIN diode or other switching technology, neither Irwin nor Standke teaches or suggests the combination of a MEMS switch and FET as claimed in Applicant's independent claims. In fact, the Office Actions to date do not even appear to address the combination of a MEMS switch coupled to a FET as recited in Applicant's claims.

Accordingly, even assuming it would be proper to combine Irwin and Standke as proposed in the Office Action (*arguendo*), the resulting combination would still fail to teach or suggest *a field effect transistor coupled to a MEMS switch* as recited in Applicant's independent claims 7 and 10 or the remaining claims by virtue of their dependency thereon.

Applicant respectfully notes that the Final Office Action dated 7/6/06 has failed to even address this fundamental argument against any *prima facie* case of obviousness under 35 U.S.C. § 103. If the final rejection is not withdrawn in view of this response, Applicant respectfully requests that this point be expressly addressed in any forthcoming Advisory Action, so that there is a clear record on the Office's position in respect to this argument, in advance of the apparent forthcoming second appeal of this same application.

Because Irwin and Standke, taken alone or in combination, fail to teach or suggest all the limitations present in Applicant's claims, it is respectfully submitted that *prima facie*

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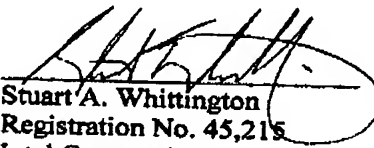
obviousness has not been established. In view of the foregoing, reconsideration and withdrawal of the §103 rejection of record is respectfully requested.

CONCLUSION.

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

Applicant hereby petitions for any extension of time which may be required to maintain the pendency of this case, and any required fee or deficiency thereof, except for the Issue Fee, is to be charged to **Deposit Account # 50-0221**.

Respectfully submitted,


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Date: October 6, 2006